July 23, 2001

VIA ELECTRONIC FILING

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic; CC Docket Nos. 96-98 and 99-68

Dear Ms. Salas:

Attached are comments of the Association for Local Telecommunications Services ("ALTS") for filing in the above-captioned proceeding.

Sincerely,

/s/

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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COMMENTS OF THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS") hereby files its comments in the above-referenced proceeding in response to the petitions for reconsideration and clarification of the Commission's *Order* on intercarrier compensation for ISP-bound traffic.[1] Those petitions seek review of (1) the "new market" rule, which establishes an immediate bill and keep regime for new market entrants, (2) the "growth cap" rule, which establishes a bill and keep regime for traffic over a 10% growth cap each year, and (3) the "mirroring" rule, which requires incumbent local exchange carriers ("ILECs") to opt into the Commission's rules by accepting the same rate caps for all local traffic subject to Section 251(b)(5) as they may pay for ISP-bound traffic under the *Order*. For the reasons discussed below, ALTS urges the Commission to suspend or

[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98 and 99-68 (rel. April 27, 2001) ("*Order*").

modify its "new market" and "growth cap" rules, but to maintain and clarify its "mirroring" rule.

I. The New Market and Growth Cap Rules Are Unreasonable and Discriminatory

Wireless World seeks clarification of the Commission's "new market" rule, which establishes a bill and keep regime in all markets where a carrier was not already providing service by June 20, 2001.[2] Specifically, Wireless World requests the Commission to clarify that the rule does not apply to carriers that requested interconnection negotiations with ILECs prior to adoption of the *Order*.[3] Similar to Wireless World,[4] many competitive local exchange carriers ("CLECs") began seeking to establish interconnection agreements with ILECs or otherwise to invest in a particular market long before the Commission adopted the *Order*. However, merely because they did not begin providing service to customers in those markets before the effective date of the order, they will be unable to take advantage of the Commission's transition plan.

ALTS agrees with Wireless World that the Commission's criteria for determining when a carrier is entitled to receive reciprocal compensation in a particular market is unreasonable and unfair.[5] Although a carrier planning to enter a market may not yet have begun exchanging traffic in that market by the date the Commission adopted the *Order*, that carrier in many cases may have spent many hours negotiating agreements and developing business plans and marketing strategies, not to mention the tens or hundreds of thousands of dollars invested to build networks, buy and collocate equipment, and otherwise prepare to provide service in that market. As noted by Wireless World, this

[2] Wireless World Petition for Reconsideration and Clarification at 2-3 ("Wireless World Petition").
[3] *Id.*
[4] *Id.* at 1.

process may take months, even years to complete; therefore, a carrier expecting to enter a market in the near future likely began planning that entry and investing time and money to facilitate that entry at least six months to a year ago. For the same reason, carriers that recently began such investment in new markets during the past couple of months may not actually begin serving customers in that market until mid-to-late 2002. Thus the premise under which the Commission adopted the "new market" rule, that "carriers entering new markets to serve ISPs have not acted in reliance on reciprocal compensation revenues and thus have no need of a transition during which to make adjustments to their prior business plans," is incorrect.[6]

All carriers must consider the cost effectiveness of entering a market, and the Commission's new rules regarding intercarrier compensation for ISP-bound traffic will undoubtedly alter the analyses of many companies, thus altering their future business plans. In the *Order*, the Commission found it "prudent to avoid a "flash cut" to a new compensation regime that would upset the legitimate business expectations of carriers and their customers."[7] The Commission considered these concerns in developing the interim transition plan; however, it appears to have abandoned them when adopting the "new market" rule, regardless of the fact that new entrant carriers had the same expectations when developing their future business plans.

ALTS submits that carriers seeking to enter new markets had a legitimate business expectation that they would receive some level of compensation for terminating ISP-bound traffic. As noted in the *Order*, state commissions required payment for ISP-

[5] *Id.* at 3.
[6] *Order* ¶ 81.
[7] *Id.* ¶ 77.

bound traffic, and carriers entered into interconnection agreements that included payment for ISP-bound traffic.[8] ALTS agrees with Wireless World that "the Commission's unsupported assertion that a CLEC has no reliance interest until it actually begins exchanging traffic with an ILEC ignores the realities of entering a new market…."[9] ALTS supports its request that, at the very minimum, the Commission clarify that the "new market" rule does not apply in markets where a carrier has requested interconnection negotiations with an ILEC prior to adoption of the *Order*.[10]

While ALTS understands the Commission's desire to curb arbitrage opportunities, it is unfair to provide carriers with so little forewarning that they stand to lose hundreds of thousands of dollars already invested because their business plan no longer makes sense in light of the *Order*. And ALTS does not concede that because those business plans are no longer cost-effective under the Commission's new rules that they were necessarily based on some form of arbitrage when they were originally formed. Even assuming carriers had some forewarning of a reduction in rates based on the existence of this proceeding, there was little to no forewarning that carriers would be subject to bill and keep in markets they were planning to enter after adoption of the *Order*.

Furthermore, the "new market" rule is discriminatory because it forbids certain carriers from recovering any of their costs of terminating ISP-bound traffic in a particular market while other carriers that entered the market earlier are allowed to recover at least a portion of those costs through reciprocal compensation payments. The Commission acknowledges "that carriers incur costs in delivering traffic to ISPs,"[11] thus carriers in

[8] *Id.* ¶ 77.
[9] Wireless World Petition at 4.
[10] *Id.* at 4-5.
[11] *Order* ¶ 80.

new markets should have equal opportunity to recover those costs as do other established carriers in those markets. Disparity under this rule would occur between the ILEC and new entrant CLECs as well as between CLECs established in that market and new entrant CLECs. Such discrimination is further compounded when one considers that established carriers may have a larger customer base over which to spread their costs, while a new entrant typically has a smaller base. Carriers in new markets should have at least an equal opportunity to recover their costs in the same manner as the established carriers in those markets. Otherwise, the Commission's rule creates a barrier to entry and will thwart the spread of competition in many markets. Many carriers will be forced to abandon their entry plans, thereby denying consumers the benefits of competition in those markets.

ALTS also agrees with Wireless World that the "growth cap" provisions should be suspended for "at least one year to enable these new market entrants to have a reasonable period of time to ramp-up their operations."[12] ALTS opposes the application of the "new market" and "growth cap" rules at any time in the future and has, along with other carriers, appealed these rules to the D.C. Circuit Court of Appeals. However, ALTS submits here that the Commission should, at a minimum, modify the "new market" rule so that it does not apply to carriers that have already sought interconnection and suspend the "growth cap" rule for at least a year, as requested by Wireless World.

Moreover, ALTS agrees that the Commission should clarify that the "new market" rule, if it is maintained, should apply only where an ILEC adopts the federal regime for intercarrier compensation for ISP-bound traffic.[13] If the ILEC does not adopt the federal rates, terms, and conditions for local voice and ISP-bound traffic, then just as

[12] Wireless World Petition at 5.

the transitional rates and growth ceiling would not apply, the "new market" rule would not apply. Otherwise, allowing ILECs to receive higher reciprocal compensation rates for traffic subject to Section 251(b)(5) while paying zero compensation to CLECs who terminate ISP-bound traffic would be unfair and would dramatically reduce or eliminate incentives for carriers to enter new markets.

II. The "Mirroring" Rule Should Be Maintained So That ILECs Don't Gain an Unfair Competitive Advantage Over CLECs

ALTS opposes petitions by the rural ILEC coalitions and associations ("Rural ILEC Petitioners") requesting that the Commission eliminate its "mirroring" rule, which requires ILECs to offer to accept the same rate caps for all traffic subject to Section 251(b)(5) as it pays for ISP-bound traffic.[14] In adopting the "mirroring" rule, the Commission found that the ILECs should not be allowed to collect higher rates for ISP-bound traffic than they pay for local traffic subject to Section 251(b)(5).[15] Its rationale that there is "no reason to impose different rates for ISP-bound and voice traffic"[16] was correct since the networks used to terminate those types of traffic are often identical. The Rural ILEC Petitioners provide no justification for rejecting the Commission's original conclusion that there are no "inherent differences between the costs on any one network of delivering a voice call to a local end-user and a data call to an ISP."[17]

Moreover, several of the Rural ILEC Petitioners fundamentally misinterpret the Commission's *Order*. They assert that ILECs are required to terminate Section 251(b)(5)

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[13] Wireless World Petition at 5-6.
[14] Petition for Reconsideration (Choctaw Telephone Company, et al.) ("Choctaw Petition"); Petition for Reconsideration and/or Clarification of the Independent Alliance on Inter-Carrier Compensation ("Independent Alliance Petition"); The National Telephone Cooperative Association's Petition for Reconsideration ("NTCA Petition").
[15] *Order* ¶ 89-90.
[16] *Id.* ¶ 90.

traffic at the federal rates for ISP-bound traffic. However, the *Order* merely requires such a result if the ILECs choose to adopt the federal rates for ISP-bound traffic. On the other hand, if they choose to continue exchanging Section 251(b)(5) traffic at the state-approved rate, they must also pay carriers the same rate to terminate ISP-bound traffic. It would be patently unfair for the Commission to allow the ILECs to unfairly gain a competitive advantage over CLECs by receiving higher rates for traffic where they are net recipients and paying lower rates for traffic where they are net payors.

CONCLUSION

For the foregoing reasons, the Commission should suspend or modify its "new market" and "growth cap" rules, but maintain its "mirroring" rule.

Respectfully Submitted,

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[17] *Id.* ¶ 91.